FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

First Appeal No. 12/2007

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Kadukar, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 19th June, 2007.

Heard Shri Kadukar for the appellant.

Appellant is the original plaintiff. A suit was filed by the plaintiff against the defendant for direction to the defendant to execute a sale deed of the suit property in favour of the plaintiff. The plaintiff further sought a mandatory injunction restraining the defendant from interfering with the peaceful possession of the plaintiff. According to the plaintiff, in view of the agreement of sale entered into, between the plaintiff and the defendant on 3/3/1990, the plaintiff was placed in possession of the suit property. Though the plaintiff was ready and willing to perform his part of the contract, the defendant failed to register the sale deed in favour of the defendant. The suit was filed in the year 1998.

The defendant denied the claim of the plaintiff and further pleaded that the suit filed by the plaintiff for grant of decree for specific performance of contract was barred by limitation.

The trial Court held that the plaintiff had proved his possession over the suit property and further held that the suit filed by the plaintiff for specific performance was barred by limitation. The trial Court, however, refused to grant relief of permanent injunction as prayed by the plaintiff, on the ground that the plaintiff had not produced any evidence on record to show that the defendant was creating any obstruction to his possession over the suit property. The trial Court further held that the plaintiff failed to prove that the defendant was attempting to sell the property to third party and in view of the aforesaid position, the cause of action for grant of permanent injunction did not arise. The trial Court consequently dismissed the suit filed by the plaintiff with costs.

The plaintiff challenged the decision of the trial Court in appeal. The appellate Court held that the suit filed by the plaintiff for specific performance of contract was barred by limitation. The appellate Court observed that the document dated 3/3/1990 was not, in fact, an agreement of sale, but was in a form of sale deed. It was the document dated 3/3/1990 and it was also not a registered document. The appellate Court further held that though a sale deed was executed on 3/3/1990, the same was not registered as the plaintiff was not in a position to pay the sale consideration to the defendant.

The findings recorded by the trial and the appellate Courts are based on a proper appreciation of material evidence on record. For applying principle

under Section 53A of the Transfer of Property Act, it was necessary for the plaintiff to prove that the document dated 3/3/1990 was an agreement of sale by which the defendant had agreed to sell the property to the plaintiff and the plaintiff was put in possession of the property in part performance of the contract. Such is not a case here. The document dated 3/3/1990 is, in fact, a sale deed, which was not registered, as rightly held by the appellate Court, in view of the fact that the plaintiff was not in a position to pay the sale consideration to the defendant.

The finding recorded by both the Courts to the effect that the suit filed by the plaintiff was barred by limitation, is also justified and calls for no interference.

Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

RMP